

REVIEWS

CONFLICT OF INTEREST AND FEDERAL SERVICE. By The Association of the Bar of the City of New York: Special Committee on the Federal Conflict of Interest Laws. Cambridge: Harvard University Press, 1960. Pp. 336. \$5.50.

THERE could be no finer example of the lawyer's public service than *Conflict of Interest and Federal Service*. The book opens new ground, considers it with greatest care and intellectual discrimination, and comes up with intelligent and feasible proposals—all in a field confused in history and practice, and thorny with intractable problems. We have “a bramble bush of statutes, exemptions, exceptions, regulations, decisions and rulings that [have] grown up in the last hundred years.” The proposed solution for remedying this mixture is practical and flexible enough to appeal to any reasonable member of Congress or of the executive branch.

The Association of the Bar of the City of New York adds to its fine record by this work, and the Ford Foundation should be congratulated on financing the enterprise. Obviously substantial as must be the contribution of Chairman Roswell Perkins and his Committee, highest credit must go to Alexander C. Hoagland, Jr., who did much of the research, and to the two men responsible for putting the book together: Bayless Manning, who retired from practice to teach at the Yale Law School, and Professor Marver Bernstein of the Princeton University Politics Department.

The statutes began effectively with the Act of 1853 “to Prevent Frauds on the Treasury.” “The level of public morality in federal office during the mid-1800's was low,”² but it is a bit hard to understand how the Vice President of the United States (Dallas) after the War of 1812, or the Secretary of State (Forsyth) shortly before 1837, could have prosecuted claims against the government for private clients while they were in office, without censure or reflection on their honor. Yet, it must be added that in my own time one hundred years later there have been cases of members of the City Council defending clients before the Cincinnati Police Court on City ordinances.

The complex of inadequate statutes dealing with conflicts of interest passed in the period from 1853 to 1958, fully known to only a few, have been supplemented by regulations of varying effectiveness in a few agencies where greater sensitivity to this problem has developed in more recent years.

A completely new area of regulation has grown up through the inquiries of Committees of the Senate, especially the Armed Services Committee, charged with recommending confirmation of Presidential appointees. This has recently

been highlighted in confirmation proceedings for President Kennedy's cabinet. But these inquiries into potential conflicts of interest have largely centered around appointments to the Department of Defense, and even in this area have been pretty much restricted to holdings of common stock.

The book's proposed program calls for a single integrated statute, repealing much of what is now in force and supplementing the balance. It contemplates a general code of regulations for all federal employment, and particularized regulations on an agency-by-agency basis.

The White House is expected to take real leadership through the President himself; the existing scheme whereby the Budget Bureau represents the President, has not worked well. This combined remedy—general regulations and the personal standards and statements of the Chief Executive—can accomplish a great deal; and a single administrator responsible to the President can make White House leadership effective.

The book presents a sample case study, a fascinating illustration of the problem faced today by scientists who may be called on as consultants for government-sponsored projects while they retain their home base at a university, and perhaps even continue to draw a share from an interest in a commercial enterprise of their own. The study comes to the only possible conclusion—that the needs of government will never be met unless some conflict of interest is permitted, albeit a conflict that is limited or regulated by careful administrative scrutiny and publicity. In fact, the same conclusion applies to other areas than scientific employment, too.

It is hard to disagree with these conclusions, but I must challenge one basic thesis of the Committee and its staff in relation to recruitment. There can be no doubt that it is difficult to recruit "qualified political executives," but the book puts the blame almost entirely upon inadequate pay, the increasing commitment of the individual to his private institution—whether business or labor or the university—and the risk of exposure to political harassment and newspaper publicity. There is no consideration of the possibility that the federal employer is recruiting in the wrong places.

It is perfectly true that because of internal politics the big business executive or labor organization official who takes a prolonged leave of absence for government service may find foreclosed the opportunity to return to his former position. The safe limit is about two years for members of management and perhaps no more than six months for a union chief. But even there younger men on the way up will take a chance. And the big shot may not be the best bet.

The "important policy-making positions" in government are said to number about 1100, and these appointees are referred to as "political executives." But a good many more in federal employment (Harlan Cleveland estimates a total of 5000) are dealing most days with matters political in the broad sense, such as congressional relations to governmental programs, or reactions of the general public to policy. All of these 5000 executives deal frequently with political

harassment and with newspaper publicity; it is part of the job, as it is with all political executives in state and local government—and with all politicians generally. The assumption of the book is evidently that the federal employer looks only in places where there is no such experience, and that “qualified political executives” must be those who have avoided such experience, namely top business men. Under this assumption people with political experience, namely politicians, are automatically excluded.

This seems to me nonsense. I am for the merit system, but I have grave doubts that executive merit for political posts can be found only among business men. We have not produced and maintained good government in Cincinnati through business men, but through honest and shrewd politicians. The “endless adventure of governing men” is not a business, but a political, enterprise. Incidentally, it is not a military enterprise either, however available retired generals or admirals may be.

Walter Lippmann calls Mr. Kennedy’s team not professional politicians or professors, but professional public servants. By contrast, Mr. Eisenhower in general did not look for this capacity in the men he chose. But while some professional public servants don’t always understand politics any more than many business men, in my book these professionals are politicians in the best and broadest sense.

I object vigorously also to the assumption of *Conflict of Interest and Federal Service* that enlistment in the federal government has to be accepted as a matter of a two or three year term. The challenge ought to be put to every person considered: enlist for the duration, that is four or eight years. Anything less than that, especially in top posts, is not only a waste of experience but an invitation to failure. I know the essential contribution and the nature, good and bad, of career services. They cannot be dealt with even in the assured four years by the best of new administrators.

If there is a question about the moral standards of politicians in the broad sense as a source for political executives, I can only say that politicians reflect the moral standards of the business or university community where they practice their art. And their standards are still likely to be higher than those of the business man who comes fresh into politics and accepts what some wise guy tells him is the “different” standard of politics. The great advantage of politicians is that they know their way around, understand that they have to persuade people, not order them around, and in general know the score. They stand up under abuse, they understand newspaper men, they don’t cry about the sacrifices they are making, and they often make surprisingly good records, certainly as good and probably better than most distinguished business men. And they are a good deal easier to recruit.

There are young “politicians” around, without more than local reputations as yet, but known at home to be good prospects. These can be found if Uncle Sam looks for them. They will have fewer conflicts of interest.

In any event these proposals for a new statute deserve vigorous promotion in Congress. They make sense. They will help get better men to serve our country.

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Note: Since this was written, the President has appointed a committee including Professor Manning and Dean Fordham to prepare for him a report and to make recommendations for legislation. The proposals are "on the way."

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